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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,247	11/20/2003	Mitsutoshi Shinkai	450100-04812	9926

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EXAMINER

FLEURANTIN, JEAN B

ART UNIT PAPER NUMBER

2162

DATE MAILED: 12/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/718,247

Applicant(s)

SHINKAI ET AL.

Examiner

JEAN B. FLEURANTIN

Art Unit

2162

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 3/1/4 & 7/2/4.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

1. This is in response to Applicant(s) arguments filed on 11/20/03.

The following is the current status of claims:

Claims 1-49 are presented for examination.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 07/02/04. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Drawings

The Drawings submitted on 11/20/03 are acknowledged.

Claim Objections

Claims 29, 31 and 33 are objected to because of "and / or". The Examiner suggests the Applicants to amend the claims in order to be more specific.

Claim 6 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 2. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-49 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

As set forth in MPEP 2106:

Products may be either machines, manufactures, or compositions of matter.

A *machine* is "a concrete thing, consisting of parts or of certain devices and combinations of devices." *Burr v. Duryee*, 68 U.S. (1 Wall.) 531, 570 (1863).

As per claims 1, 2, 6-8 and 34-36,

The independent claims 1, 2, 6-8 and 34-36, the method, system and computer program as recited in the claims, in view of the above cited MPEP section is not statutory, because "a project-making device comprising a program meta data creating unit for creating program meta data, which is managed in increment files for each of said picture programs, said program meta data comprising: a program identification hierarchical level which is a highest hierarchical level made up of meta data relating to said picture program and a hierarchical structure including at least a cut hierarchical level made up of meta data relating to cuts which are the smallest increment making up said picture program at the time of project-making" does not produce a tangible result.

The claims lack the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. They are clearly not a series of steps or acts to be a process nor are they a combination of chemical compounds to be a composition of matter. As such, they fail to fall within a statutory category. They are, at best, functional descriptive material per se.

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." Both types of "descriptive material" are nonstatutory when claimed as descriptive material per se, 33 F.3d at 1360, 31 USPQ2d at 1759. When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994)

Merely claiming nonfunctional descriptive material, i.e., abstract ideas, stored on a computer-readable medium, in a computer, or on an electromagnetic carrier signal, does not make it statutory. See *Diehr*, 450 U.S. at 185-86, 209 USPQ at 8 (noting that the claims for an algorithm in *Benson* were unpatentable as abstract ideas because "[t]he sole practical application of the algorithm was in connection with the programming of a general purpose computer.").

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-49 are rejected under 35 U.S.C. 102(e) as being anticipated by US Pub. No. 2004/0218902 issued to Yanagita et al., ("Yanagita").

The applied reference has a common Sony Corporation with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

As per claim 1, Yanagita discloses "a picture program production assistance system for producing picture programs" (see Fig. 1), said system comprising:

"a project-making device for creating program meta data in planning sheet meta data which includes program meta data" (In light the specification at page 29, line 8 to page 30, line 16, the purposed of creating program meta data in planning sheet meta data is for creating a data table for each picture program. The method data construction of umid is disclosed by Yanagita; paragraph [0179] and Fig. 16 and also Fig. 1, item 10),

"which is managed in increment files for each of said picture programs" (i.e., controlling image processing; (i.e., comprising a series of images and metadata; see paragraph [0180]), comprising

"a program identification hierarchical level which is a highest hierarchical level made up of meta data relating to said picture program" (i.e., symbol for identifying digital data; paragraph [0182]) and

"a hierarchical structure including at least a cut hierarchical level made up of meta data relating to cuts which are the smallest increment making up said picture program at the time of project-making" (In light the specification at figure 2, hierarchical level is a program meta data file. The purposed for producing (incrementing) new metadata is disclosed by Yanagita; paragraph [0264]) and

"take meta data, managed in increments of increment files for each take, comprising meta data relating to takes which are consecutive shooting processing from the start to the end of one recording" (i.e., recording production information and data image; see paragraph [0289]); and

"a processing device for obtaining said program meta data created by said project-making device, creating said take meta data for each said take" (i.e., processing images; see paragraph [0301]),

and "correlating content data relating to said take and said take meta data with said cut within said program meta data" (i.e., identification information for identifying image data and voice data; see paragraph [0300]).

As per claims 2 and 6, in addition to claim 1, Yanagita further discloses "a program identification hierarchical level which is a highest hierarchical level made up of meta data relating to said picture program" (i.e., symbol for identifying digital data; paragraph [0182]) and "a hierarchical structure including at least a cut hierarchical level made up of meta data relating to cuts which are the smallest increment making up said picture program at the time of project-making" (In light the specification at figure 2, hierarchical level is a program meta data file. The purposed for producing (incrementing) new metadata is disclosed by Yanagita; paragraph [0264]).

As per claims 3 and 9, in addition to claim 1, Yanagita further discloses "a scene hierarchical level which is a hierarchical level above said cut hierarchical level and comprises meta data relating to a scene made up of at least one said cut" (information related to photographer content; see paragraph [0071] and Fig. 2).

As per claim 4, in addition to claim 1, Yanagita further discloses "a reporting hierarchical level which is a hierarchical level above said scene hierarchical level and comprises meta data relating to a report made up of at least one said scene" (information related to photographer content; see paragraph [0071] and Fig. 2).

As per claims 5 and 11, Yanagita discloses "said program meta data includes production instruction information which is meta data instructing the production contents of said picture program" (i.e., producing images; see paragraph [0056]).

As per claim 7, in addition to claim 1, Yanagita further discloses "a program identification hierarchical level which is a highest hierarchical level made up of meta data relating to said picture program" (i.e., symbol for identifying digital data; paragraph [0182]) and "a hierarchical structure including at least a cut hierarchical level made up of meta data relating to cuts which are the smallest increment making up said picture program at the time of project-making" (In light the specification at figure 2, hierarchical level is a program meta data file. The purposed for producing (incrementing) new metadata is disclosed by Yanagita; paragraph [0264]).

As per claim 8, Yanagita discloses "a processing device comprising a program meta data obtaining unit for obtaining program meta data which is managed in increment files for each of said picture programs" (i.e., producing images; see paragraph [0056]).

As per claim 10, in addition to claim 1, Yanagita further discloses "a scene hierarchical level which is a hierarchical level above said cut hierarchical level and comprises meta data relating to a scene made up of at least one said cut" (i.e., information related to photographer content; see paragraph [0071] and Fig. 2).

As per claim 12, Yanagita discloses "said take meta data includes picture-taking conditions information which is meta data instructing the shooting conditions of said take" (i.e., image processing; see paragraph [0055]).

As per claim 13, Yanagita discloses "following executing said take, said take correlating unit correlates content data relating to said take and said take meta data with said cut selected by a user before executing said take" (i.e., input operation (gui); see paragraph [0218]).

As per claim 14, Yanagita discloses "said take correlating unit correlates content data relating to said take and said take meta data with said cut selected by a user following executing said take" (i.e., inputting image data; see paragraph [0009]).

As per claims 15 and 16, Yanagita discloses "said take correlating unit can correlate content data relating to a plurality of said takes and said take meta data with one said cut" (i.e., information related to photographer content; see paragraph [0071] and Fig. 2).

As per claims 17 and 18, Yanagita discloses "said take correlating unit can correlate content data relating to a single take and said take meta data with a plurality of said cuts each belonging within different said program meta data" (i.e., information related to photographer content; see paragraph [0071] and Fig. 2).

As per claim 19, in addition to claim 10, Yanagita further discloses "the file name of said take meta data" (i.e., file owner; see paragraph [0261]).

As per claim 20, in addition to claim 3, Yanagita further discloses "wherein said identifier is also included in said take meta data corresponding to said content data" (see paragraph [0055]).

As per claim 21, Yanagita discloses "said take correlating unit can correlate content data relating to a plurality of said takes and said take meta data with one said cut" (i.e., information related to photographer content; see paragraph [0071] and Fig. 2).

As per claims 22 and 23, in addition to claim 1, Yanagita further discloses "which is meta data relating to the shooting conditions of hierarchical levels on or higher than said cut hierarchical level, as said program meta data" (i.e., image processing; see paragraph [0055]).

As per claim 24, the limitations of claim 24 are similar to claims 21 and 22, therefore, the limitations of claim 24 are rejected in the analysis of claims 21 and 22, and this claim is rejected on that basis.

As per claims 25 and 26, Yanagita discloses "said imaging device further comprises a meta data display control unit for displaying said program meta data on a display unit" (i.e., input or output terminal; see Fig. 8, items 112 & 113 and corresponding text).

As per claim 27, Yanagita discloses "said imaging device further comprises a shot cut selecting unit for selecting said cut for correlation with said content data of said take and said take meta data, from said cuts within program meta data displayed on said display unit, based on user input" (i.e., input or output terminal; see Fig. 8 and paragraph [0228]).

As per claims 28 and 31, in addition to claim 25, Yanagita further discloses "a content data editing unit for editing said content data, based on said program meta data and/or said take meta data" (i.e., editing; see Fig. 1, item 32).

As per claims 29 and 30, in addition to claim 1, Yanagita further discloses "a take correlation information editing unit for editing said take correlation information, based on the editing results of said content data by said content data editing unit" (i.e., editing; see Fig. 1, item 32).

As per claims 32-35, the limitations of claims 32-35 are similar to claims 1-16 and 25-26, therefore, the limitations of claims 32-35 are rejected in the analysis of claims 1-16 and 25-26, and these claims are rejected on that basis.

As per claims 36-49, the limitations of claims 36-47 are similar to claims 1-16, therefore, the limitations of claims 36-49 are rejected in the analysis of claims 1-16, and these claims are rejected on that basis.

The broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. In re Cortright, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999).

CONTACT INFORMATION

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEAN B. FLEURANTIN whose telephone number is 571 - 272-4035. The examiner can normally be reached on 7:05 to 4:35.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JOHN E BREENE can be reached on 571 - 272-4107. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jean Bolte Fleurantin

Patent Examiner

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December 08, 2006